No. 78-1143

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1978

CYRUS VANCE, SECRETARY OF STATE, APPELLANT

v.

LAURENCE J. TERRAZAS

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

JURISDICTIONAL STATEMENT

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Constitutional provision and statute involved	2
Question presented	3
Statement	3
The question is substantial	8
Conclusion	19
Appendix A	1a
Appendix B	17a
Appendix C	19a
Appendix D	31a
Appendix E	62a
Appendix F	63a

CITATIONS

Cases:

Afroyim v. *Rusk*, 387 U.S. 253	7, 12, 13, 14, 15, 17, 18
Lavine v. *Milne*, 424 U.S. 577	16
Nishikawa v. *Dulles*, 356 U.S. 129	8, 10, 11, 12, 14
Perez v. *Brownell*, 356 U.S. 44	12
Rocha v. *Immigration and Naturalization Service*, 450 F.2d 946	18
Schneiderman v. *United States*, 320 U.S. 118	11
United States v. *Matheson*, 532 F.2d 809, cert. denied, 429 U.S. 823	9

Cases—Continued — Page

United States v. *Lucienne D'Hotelle*, 558 F.2d 37 18
Woodby v. *Immigration and Naturalization Service*, 385 U.S. 276 12

Constitution, statutes and regulations:

United States Constitution:

Fifth Amendment 16
Fourteenth Amendment 3, 8, 12, 13, 14, 16, 18

Immigration and Nationality Act of 1940, ch. 876, 54 Stat. 1168:

Section 401(c) 11
Section 401(e) 12, 13, 14

Immigration and Nationality Act of 1960, 8 U.S.C. 1101 *et seq.* 9

8 U.S.C. 1481(a)(1) 17
8 U.S.C. 1481(a)(6) 17
8 U.S.C. 1481(b) 9
8 U.S.C. 1481(c) 3, 7, 8, 9, 15, 16
8 U.S.C. 1503(a) 6, 17

Miscellaneous:

H.R. Rep. No. 1086, 87th Cong., 1st Sess. (1969) 10

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the court of appeals (App. A) is reported at 577 F.2d 7. The decision of the district court (App. C) is not reported. The opinion of the Board of Appellate Review of the Department of State (App. D) is not reported.

JURISDICTION

The judgment of the court of appeals (App. B) was entered on May 26, 1978. A petition for rehear-

ing *en banc* was denied on August 24, 1978 (App. E). The notice of appeal was filed on September 22, 1978 (App. F). On November 10, 1978, Mr. Justice Stevens extended the time for docketing the appeal to and including December 21, 1978. On December 21, 1978, the Chief Justice extended the time for docketing the appeal to and including January 20, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1252.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

8 U.S.C. 1481(c) provides:

> Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after September 26, 1961 under, or by virtue of, the provisions of this chapter or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Except as otherwise provided in subsection (b) of this section, any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this chapter or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

QUESTION PRESENTED

Whether 8 U.S.C. 1481(c), which provides that in actions to determine the loss of United States nationality the party claiming that such loss has occurred bears the burden of proving such claim by a preponderance of the evidence, and that a person who has performed an act of expatriation is presumed to have done so voluntarily unless the presumption is rebutted by a preponderance of the evidence, is unconstitutional under the Citizenship Clause of the Fourteenth Amendment.

STATEMENT

1. Appellee was born in Maryland on December 13, 1947. His father was a citizen of Mexico and his mother was a citizen of the United States. Appellee was thus both a citizen of Mexico under the law of that country and a citizen of the United States under the Fourteenth Amendment. App. A, *infra*, 2a.

In September 1970, while a student at the Colegio Comercial Ingles in Monterrey, Mexico, appellee signed an application for a Certificate of Mexican Nationality. The application contained the following statement in Spanish:

> I therefore hereby expressly renounce ——— citizenship, as well as any submission, obedience,

> and loyalty to ~~the~~ any foreign government, especially to that of ————, of which I might have been subject, all protection foreign to the laws and authorities of Mexico, all rights which treaties or international law grant to foreigners; and furthermore I swear adherence, obedience, and submission to the law and authorities of the Mexican Republic.

The blank spaces in the statement were filled in with the words "Estados Unidos" (United States) and "Norteamerica" (North America), respectively. The application was submitted to the Mexican government on November 16, 1970.[1] In April 1971, appellee was issued a Certificate of Mexican Nationality. App. A, *infra*, 3a.

In August 1971, appellee went to the United States Consulate in Monterrey and met with Wesley Parsons, a consular officer. According to Parsons' testimony appellee stated that he wanted "a determination of some kind on his citizenship, that he felt he was both a Mexican and American citizen, but he felt more Mexican than American[,] * * * that he intended to stay in Mexico, and that it was his impression that it was somehow illegal or against the laws of the United States for him to maintain both

[1] Appellee testified that he made the application for a Certificate of Nationality because he had been informed by an official at the Colegio Comercial Ingles that proof of Mexican nationality was a requirement for a diploma (App. A, *infra*, 2a). As the court of appeals noted (*id.* at 2a n.2), there was evidence indicating that there was no such requirement (Tr. 117, D. Ex. 56).

citizenships" (Tr. 172). Parsons explained that dual nationality was not illegal or improper under American law, but warned appellee against obtaining a Certificate of Mexican Nationality (App. A, *infra*, 4a). When appellee stated that he already had one, Parsons replied that he had probably expatriated himself (*ibid.*). Appellee responded first with surprise and then with the request that Parsons notify his draft board that he was no longer an American citizen (App. A, *infra*, 4a-5a). Parsons explained that any loss of citizenship should be authoritatively determined by the State Department, and he provided appellee with the appropriate forms (App. A, *infra*, 5a).[2] The next day, appellee returned to the consulate with a letter he had written to his draft board, stating that he was no longer an American citizen, and asked Parsons to sign and mail it, but Parsons refused to do so (Tr. 189-190).

On November 15, 1971, at the Consulate, appellee submitted certain standard forms in order that a determination of his citizenship status could be made. (App. A, *infra*, 5a-6a). Among other documents, he signed an affidavit of expatriation (D. Ex. 6), swearing that he had declared allegiance to Mexico and that he had done so "with the intention of relinquishing my United States citizenship."[3] On December 5,

[2] Appellee did not indicate during this meeting with Parsons that he had obtained the Certificate of Mexican Nationality involuntarily or mistakenly (Tr. 183-184).

[3] On the other hand, appellee answered "no" to the written question, "Did you intend by this Oath, or affirmation, to

1971, the State Department issued a Certificate of Loss of Nationality (App. A, *infra*, 6a).

After he received the certificate, appellee called Parsons and inquired whether he could regain his American citizenship. Parsons advised him that he could appeal the administrative determination of loss of nationality (Tr. 208). Appellee appealed to the Board of Appellate Review of the Department of State, which affirmed the administrative finding of expatriation and denied appellee's application for a United States passport (App. D, *infra*).

Appellee then brought this action under 8 U.S.C. 1503(a)[4] in the United States District Court for the Northern District of Illinois, seeking a declaration of his United States citizenship. After a non-jury trial, the district court held that the government had proved, by a preponderance of the evidence, that appellee had declared his allegiance to Mexico and thus

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abandon your allegiance to the United States or transfer your allegiance to the foreign state?" In a separate statement, he said: "By taking this oath I did not consider that I was relinquishing my rights as an American citizen." App. A, *infra*, 6a.

[4] 8 U.S.C. 1503(a) provides:

> If any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may institute an action under [the Declaratory Judgment Act] against the head of such department or independent agency for a judgment declaring him to be a national of the United States * * *.

expatriated himself, and that appellee's evidence was insufficient to rebut the presumption of voluntariness contained in 8 U.S.C. 1481(c). App. B, *infra*.

The court of appeals reversed. It stated: "Assuming that the proper standards were applied, we are convinced that the record fully supports the [district] court's findings" (App. A, *infra*, 8a). But the court found it necessary to "evaluate the constitutional appropriateness of section 1481(c)" (*ibid.*). The court reasoned that because Congress can not impose expatriation on a citizen against his will (*Afroyim* v. *Rusk*, 387 U.S. 253 (1967)), "the issue becomes whether Congress nonetheless retains the power to legislate as to the evidentiary standard for voluntariness or whether instead that term must be defined constitutionally" (App. A, *infra*, 9a). It concluded that it would be "inconsistent with the spirit of *Afroyim* to conclude that Congress somehow retains the power to define in the way it has here the conditions under which an individual is said to have relinquished voluntarily that citizenship" (*ibid.*). To "adopt blindly" Congress's declaration in 8 U.S.C. 1481(c) of the burden of proof in loss of nationality cases "would be to grant indirectly to Congress power over an individual's citizenship that *Afroyim* held that it could not exercise directly" (App. A, *infra*, 10a).

The court went on to conclude that the government must prove loss of nationality by "clear, convincing and unequivocal" evidence (App. A, *infra*, 11a).

It found that standard to be required by the Fourteenth Amendment as "the minimum burden of proof that can satisfactorily guarantee that the individual's interest in the retention of his citizenship is protected adequately" (App. A, *infra*, 14a). The court remanded the case to the district court for further proceedings under that standard.

THE QUESTION IS SUBSTANTIAL

The court of appeals has held an Act of Congress unconstitutional. Its decision invalidates the statute that Congress enacted to determine the burden of proof in expatriation cases. The court's holding that the Constitution requires that repudiation of citizenship be proved by clear, unequivocal, and convincing evidence is not required by prior decisions of this Court and nullifies the intent that Congress unequivocally expressed in Section 1481(c).

1. In *Nishikawa* v. *Dulles*, 356 U.S. 129 (1958), an action to determine whether an American citizen had lost his citizenship by an expatriating act, this Court held that "*no* conduct results in expatriation unless the conduct is engaged in voluntarily" and that the burden was on the government to prove the expatriating act "by clear, convincing and unequivocal evidence." *Id.* at 133. The Court further concluded that "the Government [bears] the burden of persuading the trier of fact by clear, convincing and unequivocal evidence that the act showing renunciation of citizenship was voluntarily performed." *Id.* at 135. Had *Nishikawa* been the last word on the subject, the judgment below would be correct.

Three years after *Nishikawa*, however, Congress amended the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.* (1961), to add what is now 8 U.S.C. 1481(c). That section provides that, in any action in which the loss of United States nationality is at issue, the party claiming that such loss occurred has the burden of proving that loss "by a preponderance of the evidence."[5] Furthermore, with an exception not relevant here,[6] any person who performs an act which the law classifies as an expatriating act "shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily."

Congress enacted Section 1481(c) because, in the words of the House Judiciary Committee when it reported out the bill, "[i]t is * * * difficult * * * to subscribe" to *Nishikawa*, and because "administrative application of *Nishikawa* has led to rulings vitiating outright not only the intent of the statute [providing for expatriation], but doing violence to

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[5] The party claiming that loss of nationality occurred is not invariably the government. See *United States* v. *Matheson*, 532 F.2d 809 (2d Cir.), cert. denied, 429 U.S. 823 (1976).

[6] The exception refers to 8 U.S.C. 1481(b), which provides that a person who commits an expatriating act "shall be conclusively presumed to have done so voluntarily" if the person at the time of the act was a national of the state in which the act was performed and had been physically present in that state for ten years or more immediately prior to the act. Section 1481(b) is not involved in this case.

its very letter * * *." H.R. Rep. No. 1086, 87th Cong., 1st Sess. 40-41 (1969) (citations omitted). The Committee declared that it was "impressed" by the statements of Mr. Justice Harlan, dissenting in *Nishikawa*, that "[o]ne of the prime reasons for imposing the burden of proof on the party claiming involuntariness is that the evidence normally lies in his possession," and that the majority's opinion in *Nishikawa* therefore "can be squared neither with congressional intent nor with proper and well-established rules governing the burden of proof on the issue of duress." *Id.* at 41, quoting 356 U.S. at 144-145 (Harlan, J., dissenting).

The Committee accordingly stated that "[i]n order to forestall further erosion of the statute * * *," the amendment

> sets up rules of evidence under which the burden of proof to establish loss of citizenship by preponderance of the evidence would rest upon the Government. The presumption of voluntariness under the proposed rules of evidence, would be rebuttable—similarly—by preponderance of the evidence, thus leaving undisturbed the body of judicial decisions in which it is held that expatriation shall not occur if involuntariness, duress, or compulsion is established in rebuttal of the Government's contention that expatriation was voluntary.

H.R. Rep. No. 1086, *supra*, at 41.

Congress was able thus to overrule *Nishikawa* because, from all that appears, that decision was not

based on the Constitution. The Court held as it did "[b]ecause the consequences of denationalization are so drastic * * *" and therefore " 'the facts and the law should be construed as far as is reasonably possible in favor of the citizen.' " *Nishikawa* v. *Dulles*, *supra*, 356 U.S. at 134, quoting *Schneiderman* v. *United States*, 320 U.S. 118, 122 (1943).[7] The Court in *Nishikawa* noted that the only legislative history on the proper burden of proof under the expatriation provisions of the Immigration and Nationality Act of 1940 (Section 401(c), ch. 876, 54 Stat. 1168, 1169) was the rejection of an amendment that would have established a conclusive presumption of voluntariness in certain situations, and it concluded that "[i]t is altogether consonant with this history to place upon the Government the burden of proving voluntariness." *Nishikawa* v. *Dulles*, *supra*, 356 U.S. at 135-136. Nowhere in the *Nishikawa* opinion is there any reference to any provision of the Constitution.[8]

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[7] The Court in *Nishikawa* stated that it was applying, in expatriation cases, the "same principle" that *Schneiderman* had established for actions seeking to revoke citizenship on the ground that it was illegally or fraudulently obtained. *Schneiderman* likewise contained no indication that its rule requiring clear and convincing proof of illegality or fraud was constitutionally based. On the contrary, the Court there began its opinion by stating, "Our concern is with what Congress meant by certain statutes and whether the Government has proved its case under them." *Schneiderman* v. *United States*, 320 U.S. 118, 119-120 (1943).

[8] Mr. Justice Black, with whom Mr. Justice Douglas joined, stated in a separate opinion that, while he concurred in the majority's opinion, he believed that the result was compelled

Eight years after *Nishikawa*, in *Woodby* v. *Immigration and Naturalization Service*, 385 U.S. 276 (1966), this Court held that in a proceeding to deport an alien, the government must establish the facts supporting deportability by "clear, unequivocal, and convincing evidence." *Id.* at 277. But it did so only after ascertaining that there was no statutory provision addressed to the degree of proof necessary in deportation proceedings. *Id.* at 282-284. And the Court observed that the burden of proof was "the kind of question which has traditionally been left to the judiciary to resolve * * *" (*id.* at 284).[9] Like the Court's opinions in *Nishikawa* and *Schneiderman*, *Woodby* made no mention of the Fourteenth Amendment or any other provision of the Constitution.

2. In *Afroyim* v. *Rusk*, 387 U.S. 253 (1967), this Court held that Section 401(e) of the Nationality Act of 1940, which provided that a United States citizen lost his citizenship if he voted in a foreign political election, was an unconstitutional exercise of congressional power.[10] The Court held that nothing

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by the Citizenship Clause of the Fourteenth Amendment; in his view, that Clause established that citizenship could be relinquished only by a voluntary act, and that voluntariness was to be "determined on the facts of each case after a judicial trial in full conformity with the Bill of Rights." *Nishikawa* v. *Dulles*, *supra*, 356 U.S. at 139 (Black, J., concurring).

[9] In citing *Nishikawa* for the proposition that the court had required clear, unequivocal, and convincing evidence in expatriation cases, the Court in *Woodby* added: "But see § 349(c) of the Immigration and Nationality Act, 75 Stat. 656 (1961), 8 U.S.C. § 1481(c)." 385 U.S. at 285 n.17.

[10] In so holding, the Court overruled *Perez* v. *Brownell*, 356 U.S. 44 (1958), which had held that Section 401(e) was a

in the Constitution gave Congress "any general power, express or implied, to take away an American citizen's citizenship without his assent." *Afroyim* v. *Rusk*, *supra*, 387 U.S. at 257. And the Court held that such a power would be inconsistent with the Citizenship Clause of the Fourteenth Amendment:

> To uphold Congress' power to take away a man's citizenship because he voted in a foreign election in violation of § 401(e) would be equivalent to holding that Congress has the power to "abridge," "affect," "restrict the effect of," and "take . . . away" citizenship. * * * [T]he Fourteenth Amendment prevents Congress from doing any of these things * * *. [*Id.* at 267.]
>
> * * * * *
>
> We hold that the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race. Our holding does no more than to give to this citizen that which is his own, a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship. [*Id.* at 268.]

Although the court below relied heavily on *Afroyim*, its conclusion is not compelled by that case. To the contrary, *Afroyim* preserved Congress's authority to do what it has done here.

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valid exercise of Congress's authority under the Necessary and Proper Clause and its implied authority to deal with foreign affairs, and that nothing in the Fourteenth Amendment restricted that authority.

What is essentially at issue is not the voluntariness of appellee's acts. He does not contend that his application for the Certificate of Mexican Nationality or his statements in his application for a Certificate of Loss of Nationality were extracted under duress or against his will. Rather, appellee's claim is that he did not intend by those acts to renounce his American citizenship. In *Afroyim*, the citizen likewise acted voluntarily when he voted in a foreign election. See 387 U.S. at 254. But there was no evidence in that case, and no contention by the government, that Afroyim actually intended to renounce his citizenship. It was the government's contention, relying on Section 401(e) of the Nationality Act of 1940, that whether he intended to or not, Afroyim had automatically expatriated himself by casting his ballot. This Court held that the Constitution permits no involuntary expatriation, and that the Fourteenth Amendment defines a citizenship "which a citizen keeps unless he voluntarily relinquishes it." 387 U.S. at 262. Therefore the Court had no occasion to reach, and did not reach, the questions presented here: the quantum of evidence sufficient to show voluntary relinquishment, and the constitutionality of placing on the citizen the burden of rebutting a presumption of voluntariness.

It is true that the Court's opinion in *Afroyim* was written by Mr. Justice Black, who would have decided *Nishikawa* on constitutional grounds. See note 8, *supra*. But in his concurring opinion in *Nishikawa* he was careful to note, "Of course a citizen

has the right to abandon or renounce his citizenship and Congress can enact measures to regulate and affirm such abjuration." Specifically, he stated that "Congress may provide rules of evidence for * * * trials" in which the question of voluntary relinquishment is at issue. 356 U.S. at 139.

Nothing in *Afroyim* casts doubt on those propositions. Indeed, *Afroyim* quotes with approval a statement of Representative Van Trump of Ohio, who in 1868 introduced a bill to provide, in the Court's words, "merely a means by which the citizen could himself voluntarily renounce citizenship" (387 U.S. at 264). Representative Van Trump stated, "[T]he right and the only power of expatriation * * * belongs and appertains to the citizen and not to the Government * * *." But in the same sentence, in words also quoted with approval in *Afroyim*, Representative Van Trump said, " '[I]t is the evidence of his election to exercise his right, and not the power to control either the election or the right itself, which is the legitimate subject matter of legislation' " (*id.* at 265).

Thus, there is no support for the court of appeals' conclusion that to uphold Section 1481(c) "would be to grant indirectly to Congress power over an individual's citizenship that *Afroyim* held that it could not exercise directly" (App. A, *infra*, 10a). *Afroyim* held that Congress could not denationalize a citizen against his will, and that voting in a foreign election is not an act that in itself establishes voluntary relinquishment of citizenship. In contrast, as Representative Van Trump stated, the provision of

rules of evidence to determine whether the citizen has chosen to exercise his right of relinquishment is "the legitimate subject matter of legislation." Section 1481(c) provides such rules.

3. We submit that the power of Congress to prescribe the standard of proof to determine when expatriation is voluntary is limited, not by the Citizenship Clause of the Fourteenth Amendment, but by the Due Process Clause of the Fifth Amendment. Section 1481(c) fully satisfies the requirements of due process. The statute in no way limits the right of one who has arguably expatriated himself to a full hearing and a judicial determination of his citizenship. It merely sets the burden of proof the court must follow, and its formulation of the burden follows principles of long standing that cannot be considered arbitrary or even unreasonable. Congress adopted the test applied in the majority of noncriminal cases, including cases in which important individual interests are at stake.

Thus, while this Court has stated its belief that a higher standard of proof is preferable in expatriation cases (*Nishikawa, supra*), and in denaturalization and deportation cases as well (*Schneiderman* and *Woodby, supra*), each of those statements was made in the absence of congressional action on the question. Here, Congress has acted.[11]

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[11] As this Court observed in *Lavine* v. *Milne*, 424 U.S. 577, 585 (1976), "[w]here the burden of proof lies on a given issue is, of course, rarely without consequence and frequently may be dispositive to the outcome of the litigation or application," but "[o]utside the criminal law area, where special concerns attend, the locus of the burden of persuasion is normally not an issue of federal constitutional moment."

4. Resolution of the question presented is important to the Department of State, which administers the expatriation provisions of the nationality laws. Since this Court's 1967 decision in *Afroyim* v. *Rusk*, *supra*, the Department of State has made a finding of loss of nationality in 20,050 cases. In 17,061 cases—more than 85 percent of the total—that finding was based on either the citizen's naturalization in a foreign country (8 U.S.C. 1481(a)(1)) or his formal renunciation of nationality before an American diplomatic or consular officer abroad (8 U.S.C. 1481(a)(6)). The Department of State estimates that approximately 40 percent of determinations of loss of nationality, from all sources, are contested.

The decision below will make expatriation extremely difficult to prove in any contested case. For as the facts of this case suggest, the individual's subsequent assertion that he did not intend to renounce his citizenship will often make it most difficult, even given his unequivocal statements to the contrary made at the time of his expatriating act, for the government to sustain the burden of proof imposed by the court below. If the government cannot effectively rely on such contemporaneous statements as proof of intent to renounce, administrative decisions of expatriation will seldom be final.[12]

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[12] Under 8 U.S.C. 1503, an action to determine nationality must be brought within five years of an administrative denial

The Fourteenth Amendment does not require, we submit, that those who renounce their citizenship in a deliberate and formal procedure, whether to avoid its burdens or for any other voluntary reason, should be allowed to reclaim its benefits because the government cannot prove, by clear and convincing evidence, that their present statements of past intention are incorrect.

Lastly, if the decision below is allowed to stand, the finality of thousands of past determinations of loss of nationality will be in doubt. *Afroyim* itself has been held fully retroactive by the only court of appeals to consider the question. *Rocha* v. *Immigration and Naturalization Service*, 450 F.2d 946 (1st Cir. 1971); *United States* v. *Lucienne D'Hotelle*, 558 F.2d 37, 40-42 (1st Cir. 1977). The decision of the court below, reached as it was in reliance on *Afroyim*, could likewise be held retroactive in cases brought by persons wishing to contest past findings of expatriation.

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of any "right or privilege as a national of the United States * * *." But there is no time limit on the initial assertion of such a right or privilege.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted.

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JANUARY 1979

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 77-2007

LAURENCE J. TERRAZAS, PLAINTIFF-APPELLANT,

v.

CYRUS VANCE, Secretary of State,
DEFENDANT-APPELLEE.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 75 C 2370—ABRAHAM L. MAROVITZ, *Judge.*

Argued April 13, 1978—Decided May 26, 1978

Before CASTLE, *Senior Circuit Judge*, SWYGERT and SPRECHER, *Circuit Judges.*

SPRECHER, *Circuit Judge.* The issue in this appeal is what standard of proof a district court should apply in deciding whether an individual voluntarily renounced his United States citizenship and thereby expatriated himself under 8 U.S.C. § 1481.

I

Plaintiff was born in Takoma Park, Maryland on December 13, 1947. His father was a citizen of

Mexico and his mother was a citizen of the United States. Plaintiff, therefore, under the Fourteenth Amendment[1] and the laws of Mexico was at birth a citizen of *both* the United States and Mexico.

The events surrounding plaintiff's apparent expatriation transpired in 1970-71 while plaintiff was a student at the Colegio Comercial Ingles in Monterrey, Mexico. Plaintiff claims that he was told by an official of that college that a Certificate of Mexican Nationality was necessary as evidence of his citizenship which in turn was a requirement for graduation.[2] Thus, in September 1970, while plaintiff was in the United States for a Selective Service physical examination for possible induction in the army, his father procured an application for a Certificate which he instructed the plaintiff to sign.

On the application was printed in Spanish the following translated material:

> I therefore hereby expressly renounce ——— citizenship, as well as any submission, obedience, and loyalty to ~~my~~ army foreign government, especially

[1] Under the Fourteenth Amendment, "[a]ll persons born . . . in the United States . . . are citizens of the United States."

[2] There is a factual dispute as to whether plaintiff in fact was required to have a Certificate of Mexican Nationality in order to receive his degree. It appears that legally his Mexican identification card which he had acquired in 1966 would have sufficed. Nonetheless, plaintiff maintains that he was told differently by the College's officials and there is an affidavit in the record from one of those officials that appears to corroborate his statement.

> to that of ———, of which I might have been subject, all protection foreign to the laws and authorities of Mexico, all rights which treaties or international law grant to foreigners; and furthermore I swear adherence, obedience, and submission to the law and authorities of the Mexican Republic.

Ultimately, the blanks were filled in with the Spanish equivalents of the words "United States" ("Estados Unidos") and "North America" ("Norteamericana"), respectively. Plaintiff, however, maintains that when he signed the application, none of the blanks were filled in and that he had no idea that he was renouncing his United States citizenship.

Plaintiff's application was sent to Mexico City and submitted by a brother of plaintiff's father to the Mexican government on November 16, 1970. On April 13, 1971, plaintiff was issued a Certificate of Mexican Nationality. Plaintiff used the Certificate to apply for a job as an insurance salesman in Mexico and to acquire a Mexican passport in order to return to the United States.[3] Plaintiff also acquired a Mexican social security card and he registered with the Mexican military. Neither of these facts, however, required plaintiff to have a Certificate or to be a Mexican national.

In August 1971, plaintiff went to the United States Consulate in Monterrey, Mexico because he had been

[3] The passport was acquired after the Department of State determined that plaintiff had expatriated himself and it was done at the suggestion of plaintiff's lawyer. Plaintiff has resided in the United States since that time.

told informally by a State Department employee that the Certificate may have affected his United States citizenship. At the Consulate plaintiff met with Wesley Parsons, the Chief of the Passport Citizenship Welfare Protection Whereabouts Unit which dealt with nationality cases. Plaintiff apparently asked Mr. Parsons about the legality of dual citizenship (Tr. at 173). Mr. Parsons explained that there was no legal impediment to dual citizenship, but that plaintiff must be careful not to acquire a Certificate of Mexican Nationality (Tr. at 177). When plaintiff informed Mr. Parsons that he had acquired such a Certificate, Mr. Parsons told him "as far as I am concerned, . . . you have expatriated yourself" (Tr. at 177).[4]

According to Mr. Parsons, plaintiff responded to this news with two distinct reactions. First, he was surprised to learn that he had lost his United States citizenship (Tr. at 262). Second, plaintiff asked Mr. Parsons to provide him with a letter informing his

[4] This legal conclusion was based on Mr. Parsons's experience in from three to five cases dealing with a Certificate of Mexican Nationality. Nonetheless, Mr. Parsons made no effort at the time to learn any facts surrounding the application for or the issuance of plaintiff's Certificate. It appears to us somewhat odd that so little effort was made by an official of the Department of State to protect plaintiff's citizenship.

We should note that there is a dispute as to whether Mr. Parsons told plaintiff that his acquisition of a Certificate of Mexican Nationality constituted an act of treason. Given our disposition of this case, we need not resolve this issue.

draft board in Chicago that he was no longer an American citizen (Tr. at 178).[5]

Mr. Parsons explained to plaintiff that he lacked the authority to make a final determination as to plaintiff's citizenship and that it would be necessary to "document this case" [6] by filing certain forms with the Department of State. To that end Mr. Parsons asked plaintiff to fill out various forms explaining the circumstances surrounding his acquisition of the Certificate of Mexican Nationality.

In November 1971, plaintiff returned to the Consulate with the various necessary documents to be

[5] Plaintiff did submit a letter to Mr. Parsons on August 31, 1971, which informed plaintiff's draft board that he was no longer a United States citizen. Mr. Parsons repeated his statement that he lacked the authority to send such a letter because he was not empowered to make a final determination on plaintiff's citizenship. There was no evidence before the district court as to whether the letter or some other version of it was ever sent to the draft board.

Obviously, the government's view of this case is that plaintiff's actions regarding his Mexican and United States citizenship were motivated by his desire to avoid the draft. Although there was not a great deal of evidence on this question introduced at the trial before the district court, there was sufficient evidence from which such an inference could be drawn. We do note, however, in this regard that Mr. Parsons's assessment was that it did not appear to him that plaintiff "left the United States to evade or avoid military service" (Tr. at 179).

[6] It is not altogether clear that Mr. Parsons's efforts to "document this case" were motivated by plaintiff's concern about the draft. Even without plaintiff's concern, Mr. Parsons still had a duty to submit to the State Department a report on any apparent case of expatriation (Tr. at 164). *See* 8 U.S.C. § 1501.

included in his Application for Registration.[7] On one form, plaintiff responded "no" to the question; "Did you intend by this Oath, or affirmation, to abandon your allegiance to the United States, or transfer your allegiance to the foreign state?" In a separate statement drafted by plaintiff, he acknowledged that he felt "more Mexican than American," but nonetheless said that "[b]y taking this oath I did not consider I was relinquishing my rights as an American citizen. . . ." In a third statement, also drafted by the plaintiff and submitted that same day, plaintiff, contrary to his other two statements, stated that he took the "oath of allegiance" voluntarily and "that it was done with the intention of relinquishing my United States citizenship." Except for this one statement, plaintiff has unswervingly contended in all other documents and testimony that he never intended to relinquish his United States citizenship when in April 1970 he signed the application for the Certificate of Mexican Nationality.

A Certificate of Loss of Nationality was approved by the State Department in December 1971. The day

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[7] It is less than clear whether plaintiff knew at the time he was asked to fill out these documents that he was making in essence an application for a Certificate of Loss of Nationality. It was described to him as a "determination as to whether or not he had expatriated himself" (Tr. at 283).

In filling out these documents, plaintiff was assisted by Mr. Parsons's secretary or assistant, Maria Ibarra. There is some dispute as to whether some of her suggested changes injured plaintiff's chances of retaining his citizenship. Given our disposition of this case, however, we need not resolve that dispute.

after it was mailed to plaintiff he called Mr. Parsons to find out "what he could do to reverse the process. . . . He wanted to regain his American nationality" (Tr. at 208). Mr. Parsons responded, "You have got to talk to the Department of State. Don't talk to me" (Tr. at 208).

Plaintiff did seek reinstatement of his citizenship by taking an appeal from the issuance of the Certificate of Loss of Nationality to the Board of Appellate Review of the Department of State. On April 29, 1975, following a full hearing, that body affirmed the administrative finding of plaintiff's expatriation, and denied plaintiff's application for a United States passport.

Plaintiff instituted this action against the Secretary of State, seeking the issuance of a passport and a declaration of his United States citizenship, pursuant to 8 U.S.C. § 1503(c). After a three-day bench trial, the district court found for the Secretary-defendant and held that the denial of plaintiff's application for a passport by reason of expatriation was proper. Plaintiff appeals that judgment and our jurisdiction derives from 28 U.S.C. § 1291.

II

The district court in its memorandum decision applied the burden of proof standards created in 8 U.S.C. § 1481(c), which require the government to prove that plaintiff has taken an oath, made an affirmation or declared his allegiance to Mexico by a "preponderance of the evidence." If the government satisfies its burden, then the statute presumes that

plaintiff acted voluntarily unless he can prove by a preponderance of the evidence that his actions were involuntary. *See King* v. *Rogers*, 463 F.2d 1188, 1189 (9th Cir. 1972).

The district court in applying those standards to this case found that the government proved that plaintiff had declared his allegiance to Mexico by the preponderance of the evidence. In addition, the court concluded that plaintiff's evidence was insufficient to rebut the presumption of voluntariness. Assuming that the proper standards were applied, we are convinced that the record fully supports the court's findings. Therefore, it is necessary for us to evaluate the constitutional appropriateness of section 1481(c).

In considering the constitutionality of that provision, our analysis must begin with the Supreme Court's opinion in *Afroyim* v. *Rusk*, 387 U.S. 253 (1967). In *Afroyim*, the Court held unconstitutional section 1481(a)(5), which made voting in a political election of a foreign state an expatriating act. In so holding, the Court reasoned that the Fourteenth Amendment protects "every citizen of this nation against a congressional forcible destruction of his citizenship."[8] *Id.* at 268. Therefore, in the Court's

[8] In so holding the Court overruled its previous decision in *Perez* v. *Brownell*, 356 U.S. 44 (1958), in which the Court held that Congress had the power to remove an individual's citizenship based on "its power to regulate foreign affairs." *Id.* at 57.

The Court in *Afroyim* rejected the idea that Congress had some implied power to tamper with an individual's citizenship. Instead, it relied on Chief Justice Warren's dissent in *Perez* in which he concluded that "[u]nder our form of government, as established by the Constitution, the citizenship of the lawfully naturalized and the native-born cannot be taken from them." 356 U.S. at 66.

view every citizen has "a constitutional right to remain a citizen" of this country "unless he *voluntarily* relinquishes that citizenship." *Id.* (emphasis added).[9]

In light of the Court's holding in *Afroyim* that Congress is constitutionally devoid of the power to impose expatriation on a citizen, the issue becomes whether Congress nonetheless retains the power to legislate as to the evidentiary standard for voluntariness or whether instead that term must be defined constitutionally. It seems to us absolutely inconsistent with the spirit of *Afroyim* to conclude that Congress somehow retains the power to define in the way it has here the conditions under which an individual is said to have relinquished voluntarily that citizenship.

In fact, the legislative history surrounding section 1481 demonstrates that Congress recognized that the citizen's ability to retain his citizenship can be very much a function of the standard of proof. Congress lowered the standard to a preponderance of the evi-

[9] The Court's holding in *Afroyim* was reaffirmed recently in *Rogers* v. *Bellei*, 401 U.S. 815 (1971), where the Court held that Congress could regulate the citizenship of an individual born in a foreign country to parents one of whom is an alien, and the other a citizen of the United States. In so holding the Court distinguished *Afroyim* as being based on the Fourteenth Amendment. The *Bellei* Court recognized that in such a case "Congress has no 'power, express or implied, to take away an American citizen's citizenship without his assent.'" 401 U.S. at 835.

dence because it felt that there were individuals who should be expatriated but who were avoiding that result in administrative proceedings where the stricter standard was being applied. H.R. Rep. No. 1086, 8th Cong., 1st Sess., *reprinted in* (1961) U.S. CODE CONG. & AD. NEWS 2950, 2984. It seems to us that to adopt blindly Congress's judgment on the burden of proof as to expatriation would be to grant indirectly to Congress power over an individual's citizenship that *Afroyim* held that it could not exercise directly.[10] We decline to sanction such a result.

The issue, of course, remains as to what standard of proof is constitutionally required. In making that determination it is important to recognize that "[t]he standard of proof is more than an empty semantic exercise; it reflects the value society places" on the specific interest at stake. *Tippett* v. *State of Maryland*, 436 F.2d 1153, 1166 (4th Cir. 1971) (Sobeloff,

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[10] The Court in *Afroyim* quoted Congressman Lowndes's remarks in 1818 made in response to a proposal for the establishment of some means for voluntary expatriation. Those comments seem particularly apt as applied to this case.

> If you pass this bill, . . . you have only one step further to go, and say that such and such acts shall be considered as presumption of the intention of the citizen to expatriate, and thus take from him the privileges of a citizen. . . . [Q]uestions affecting the right of the citizens were questions to be regulated, not by the laws of the General or State Governments, but by Constitutional provisions.

387 U.S. at 260 (quoting 31 Annals of Cong. 1050-51 (1818)).

J., dissenting). Seen from that perspective, we conclude that the government must prove by clear, convincing and unequivocal evidence that plaintiff's renunciation of his United States citizenship was performed voluntarily.

We reach that conclusion for several reasons. First, a clear and convincing evidence standard was the test adopted by the Supreme Court in *Nishikawa* v. *Dulles*, 356 U.S. 129, 133-36 (1958), prior to Congress's amendment of the statute. *See also Berenyi* v. *District Director, INS*, 385 U.S. 630, 636 (1967) (dicta). While it is not clear that the Court derived that standard from the Constitution, it is clear that it was not statutorily mandated. As the Court noted, "there is no discussion of the problem of the burden of proof" in the legislative history of the Act it was considering, 356 U.S. at 135. Thus, regardless of its source, the clear, convincing and unequivocal evidence standard represented the Court's view of the burden of proof that best protected the individual interest in his or her citizenship.[11]

Second, most of the lower court decisions subsequent to *Afroyim* have employed the clear, convincing and unequivocal evidence standard. *See, e.g., United States* v. *Matheson*, 532 F.2d 809, 818 (2d Cir. 1976);

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[11] The Supreme Court in *Berenyi* v. *District Director, INS*, 385 U.S. 630 (1967), a case subsequent to Congress's amendment to the statute, stated in dicta that "[w]hen the Government seeks to strip a person of citizenship already acquired . . . it carries a heavy burden of proving its case by 'clear, unequivocal and convincing evidence.'" *Id.* at 636 (footnotes omitted).

Peter v. *Sec'y of State*, 347 F. Supp. 1035, 1038 (D.D.C. 1972) (three judge court). *But see King* v. *Rogers*, 463 F.2d 1188, 1189 9th Cir. 1972) (no discussion of the issue). In fact, the *Matheson* decision is essentially indistinguishable from this case.[12] There, the Second Circuit refused to hold that an American citizen had relinquished voluntarily her citizenship by taking an oath of allegiance to Mexico. The court held that specific intent to renounce U.S. citizenship proved by clear, convincing and unequivocal evidence was required before the mere taking of an oath of allegiance could result in an individual's expatriation. We find no basis for disagreeing with that conclusion.

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[12] The government attempts to distinguish *Matheson* on the basis that the oath involved in that case did not contain the explicit renunciatory language involved in the oath signed by plaintiff in this case. The problem with this distinction is that plaintiff claims that since there were blanks in the oath he did not know that he was renouncing his United States citizenship. In fact, he consistently has made that claim in all documents and testimony with the exception of the one affidavit. Thus, to the extent that there is a distinction between *Matheson* and this case, it is predicated on a factual question that must be resolved under a standard different from that used by the district court.

We note also that the *Matheson* case involved the government as plaintiff seeking to acquire taxes from a citizen-defendant whose estate claimed that she had expatriated herself and thus was not subject to taxes as a United States cititizen. We do not find the unusual posture of that case to have any bearing on the relevance to this case of that court's analysis of the requirements for expatriation. It would truly be a sad state of affairs if the government's view of an individual's ability to retain his citizenship was based on his potential tax liability to this country.

Finally, we believe that the stricter standard of proof best reflects the paramount importance of the individual's interest in United States citizenship. The court in *Matheson* described that interest as follows:

> An individual denied his or her United States citizenship, even if permitted entry into this country, is denied effective participation in our country's electoral processes . . . which is ordinarily regarded as a fundamental constitutional interest, as well as access to a range of livelihoods and positions opened only to citizens of this ocuntry.

532 F.2d at 815 (citations omitted). Similarly, the court in *Peter* recognized that American citizenship is "perhaps the most precious right known to man today." 347 F. Supp. at 1038.

These are not mere idle expressions of patriotism. Rather, they represent judicial recognition that the benefits to the individual of our democratic society are predicated on citizenship. Seen in this way, it is difficult to imagine a commodity more precious to all individuals born or naturalized in this country. Perhaps Chief Justice Warren expressed the view most eloquently:

> Citizenship *is* man's basic right for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen.

Perez v. *Brownell*, 356 U.S. at 64.

In searching for a standard of proof to be employed in determining whether an individual has voluntarily relinquished this valuable interest in citizenship, we should be mindful of Justice Harlan's statement that "a standard of proof represents an attempt to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication." *In re Winship*, 397 U.S. 358, 370 (1970) (Harlan, J., concurring). The Supreme Court itself has made clear society's view on this issue; when citizenship is at stake, we must be particularly cautious to guarantee that ambiguities in the evidence are resolved in favor of citizenship. *See Nishikawa, supra*, 356 U.S. at 136. A clear, convincing and unequivocal evidence standard is the minimum burden of proof that can satisfactorily guarantee that the individual's interest in the retention of his citizenship is protected adequately. *But cf. Nishikawa, supra*, 356 U.S. at 139 (Black & Douglas, JJ., concuring) (requring a full judicial trial prior to expatriation). We therefore conclude that the Fourteenth Amendment requires the government to prove by clear, convincing and unequivocal evidence that plaintiff voluntarily relinquished his United States citizenship.

Since the district court applied an incorrect standard of proof, we must reverse its decision and remand the case back to that court for further proceedings. In remanding this case to the district court, however, we are not necessarily requiring that court to conduct a new trial. We recognize that there already have

been two full evidentiary hearings in this case—one before the court and the other before the Department of State—and that the government's witnesses are probably scattered throughout the world. Thus, a new trial may constitute an undue burden on the government. On the other hand, credibility is a crucial factor in this case, and thus the court as trier of fact may be unable to reach a satisfactory decision based on the testimony contained in a two-year-old transcript. We believe the district court is in the best position to evaluate these countervailing considerations and determine in its discretion whether a new trial or a review of the record based on the new, stricter standard of proof will best serve the ends of justice. *See* 28 U.S.C. § 2106; *Panama Mail Steam-*

ship Co. v. *Vargas*, 281 U.S. 670, 672 (1930). We therefore remand to the district court for further proceedings consistent with this opinion.[13]

REVERSED AND REMANDED

[13] Plaintiff complains about the admission of certain documents into the record by the district court. While we have some difficulty pinpointing plaintiff's assignment of error, we have scrutinized the record and found not the slightest error in the district court's procedure for admitting the large number of exhibits involved at the trial. On remand, therefore, the district court may consider all documents that were admitted in the original trial.

Plaintiff, in a footnote in his brief, mentions that he is appealing from the district court's denial of his motion for leave to appeal in forma pauperis under 28 U.S.C. § 1915. Plaintiff, however, presents no arguments suggesting how the district court abused its discretion, see *Brewster* v. *North American Van Lines, Inc.*, 461 F.2d 649, 651 (7th Cir. 1972), in denying plaintiff's motion. Moreover, nothing in the record casts any doubt on the propriety of the district court's decision. We therefore affirm the order denying plaintiff's motion to appeal in forma pauperis.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

May 26, 1978

Before

HON. LATHAM CASTLE, *Senior Circuit Judge*

HON. LUTHER M. SWYGERT, *Circuit Judge*

HON. ROBERT A. SPRECHER, *Circuit Judge*

No. 77-2007

LAURENCE J. TERRAZAS, PLAINTIFF-APPELLANT,

v.

CYRUS VANCE, Secretary of State,
DEFENDANT-APPELLEE.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

No. 75-C-2370 ABRAHAM L. MAROVITZ, *Judge*

Opinion by Judge Sprecher

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, REVERSED, with costs, and REMANDED, in accordance with the opinion of this court filed this date.

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 C 2370

LAURENCE J. TERRAZAS, PLAINTIFF

vs.

CYRUS VANCE, Secretary of State, DEFENDANT

MEMORANDUM DECISION

I. *Introduction*

Pursuant to § 360(a) of the Immigration and Nationality Act of 1952 ("the Act"), 8 U.S.C. § 1503 (a), plaintiff Laurence J. Terrazas instituted this action against the defendant Secretary of State seeking the issuance of a United States passport. In this action plaintiff challenges the administrative determination reached by the Department of State that plaintiff expatriated himself on August 3, 1971 within the meaning of § 349(a)(2) of the Act, 8 U.S.C. § 1481(a)(2), when he took an oath of allegiance to a foreign state in connection with his application for a Certificate of Mexican Nationality. See, Certificate of Loss of United States Nationality, dated December 21, 1971. (Def. Ex. #5.)

On April 29, 1975, following a full hearing and review of plaintiff's claims, the Board of Appellate Review of the Department of State affirmed the ad-

ministrative finding of plaintiff's expatriation; and based upon those findings, plaintiff's subsequent application for a United States passport was denied.

In accordance with the provisions of § 349(c) of the Act, 8 U.S.C. § 1481(c), a trial of this action was held from February 14-17, 1977. Based upon this Court's evaluation of the evidence presented at trial, and for the reasons more fully set forth below, we find for the defendant, and hold that the denial of plaintiff's application for a United States passport for reasons of expatriation, was proper.

II. *The Secretary's Burden of Proof*

Section 349(c) of the Act, 8 U.S.C. § 1481(c), provides in pertinent part:

> (c) Whenever the loss of United States nationality is put in issue . . . the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Except as otherwise provided in subsection (b), any person who commits or performs, or has committed or performed, any act of expatriation under the provisions of this or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

From the testimony and documentation presented by the defendant at trial, we hold that the Secretary

has sustained his burden of proof by showing by a preponderance of the evidence that plaintiff made a declaration of allegiance to a foreign state as part of his application for Mexican Nationality; that a Certificate of Mexican Nationality was issued to plaintiff which gave legal effect to plaintiff's declaration of allegiance; and that plaintiff's expatriation was conformed by the issuance of a Certificate of Loss of United States Nationality. (See Tr. 474.)

Plaintiff has admitted that he signed an Application for a Certificate of Mexican Nationality. (Tr. 21, 23, 32; Def. Ex. #8), and that he thereafter received a Certificate of Mexican Nationality (Tr. 44; Def. Ex. #9). The Application for Certificate of Mexican Nationality signed by plaintiff contains an unequivocal oath of allegiance to the State of Mexico, and a renunciation of United States citizenship, (Tr. 38, 40; Def. Ex. #8), and the declarations contained therein are considered to have operative legal effect under Mexican law on the date that the Mexican government approved the Application and issued the Certificate of Mexican Nationality. (Tr. 132; Def. Ex. #55, 55(a), 55(b)). The Certificate of Mexican Nationality issued to plaintiff on April 3, 1971 contains a statement that the applicant had sworn adherence, obedience and submission to the authorities of the State of Mexico, (Tr. 46; Def. Ex. #9), and plaintiff has admitted that he read and understood the Certificate upon receipt. (Tr. 47).

III. *The Voluntariness of Plaintiff's Acts*

At trial, plaintiff sought to rebut the statutory presumption of the voluntariness of his act of expatriation, and to challenge the finding of expatriation itself by asserting that the Mexican declaration did not constitute an oath; that he did not take an oath of allegiance to Mexico; that he did not perform acts contrary to his United States citizenship; that he detrimentally relied upon officers of the United States; and that the section of the law under which his expatriation occurred is unconstitutional. We find plaintiff's arguments unconvincing, and his proffered evidence insufficient.

A.

While it is true that the oath taken by plaintiff in his Application for Certificate of Mexican Nationality ("the Application"), does not include an appeal to God, the absence of such an appeal does not detract from the meaningfulness of the oath.

We note first that from the uncontroverted evidence presented by defendant, Mexican law does not require an appeal to God as part of the operative language of an oath. (Tr. 237; Def. Ex. #29). And while the oath of allegiance, per se, has been abolished in Mexico, the declaration of allegiance contained in the Application and the Certificate serves as the equivalent of an oath under Mexican law.

Second, under § 349(a)(2) of the Act, 8 U.S.C. § 1481(a)(2), it is the form of the substantive statement of allegiance to a foreign state as opposed to

the adjectival description of the statement itself which is determinative and most relevant in deciding matters of expatriation. Thus, under the statute, any meaningful oath, affirmation or declaration which "places the person [making] it in complete subjection to the state to which it is taken," III Hackworth, *Digest of International Law*, 219-220 (1942) may result in expatriation. See also, *Savorgnan* v. *United States*, 338 U.S. 491 (1950).

The particular declaration made by plaintiff in his Application contained not only his declaration of allegiance to Mexico, but also an express renunciation of his United States citizenship as required by the 1949 amendment to the Mexican Nationality and Naturalization Act. See, Def. Ex. #8, 9, 18, 18(a), 29, 54, 54(a), 55(a) and 55(b). As noted by the court in *United States* v. *Matheson*, 400 F. Supp. 1241, 1245 (S.D.N.Y. 1975), aff'd., 532 F.2d 809 (2nd Cir.), *cert. denied*, 45 L.W. 3250 (1976), the declaration of allegiance to a foreign state in conjunction with the renunciatory language of United States citizenship "would leave no room for ambiguity as to the intent of the applicant."

We therefore hold that the declaration and renunciation made by plaintiff in his Application constituted a meaningful oath within the purview of § 349(a)(2) of the Act, 8 U.S.C. § 1481(a)(2).

B.

The overwhelming weight of the evidence presented at trial supports defendant's contention that plaintiff

took an oath of allegiance to Mexico in connection with his Application.

Diplomatic Note #102276 (Def. Ex. 54) confirms that applicants for Mexican citizenship must use printed Application forms which contain an oath of adherence, obedience and submission to Mexico, and renunciation of any other citizenship. Diplomatic Note #104667 (Def. Ex. 34(a); 34(b)) confirms that plaintiff presented a signed Application to the Mexican Ministry dated November 16, 1970, requesting the issuance of a Certificate of Mexican Nationality; that the Application was received on January 9, 1971; and that the Certificate was issued to plaintiff by the Mexican Department of Foreign Affairs on April 3, 1971.

Further, plaintiff's own sworn statements, made subsequent to his execution of the Application, contain admissions by plaintiff that he applied for Mexican citizenship and took an oath of allegiance to Mexico. (See, eg. Def. Ex. 6, 13, 14, 15.)

Finally, the evidence strongly supports defendant's assertions that plaintiff was old enough and sufficiently schooled to understand what he was doing at the time that he signed the Application, and that plaintiff was, in fact, the one who signed the Application and is the individual to whom the Diplomatic Notes refer.

C.

The Fourteenth Amendment states that "All persons born or naturalized in the United States . . . are

citizens of the United States." According to the Supreme Court in *Afroyim* v. *Rusk*, 387 U.S. 253, 268 (1967), this constitutional provision serves to "protect every citizen of this Nation against a congressional forcible destruction of his citizenship." Thus, every citizen has "a constitutional right to remain a citizen unless he [voluntarily] relinquishes that citizenship." Such voluntary relinquishment may be proved by evidence of explicit renunciation; acts inconsistent with United States citizenship; or by affirmative acts manifesting a decision to accept foreign nationality. *King* v. *Rogers*, 463 F.2d 1188 (9th Cir. 1972); *Baker* v. *Rusk*, 296 F. Supp. 1244 (C.D.Calif. 1969). A person of dual nationality will be held to have expatriated himself from the United States when it is shown that he voluntarily committed an act whereby he unequivocally renounced his allegiance to the United States. *Fletes-Mora* v. *Rogers*, 160 F. Supp. 215 (C.D. Calif. 1958).

The evidence presented at trial supports the conclusion that plaintiff acted voluntarily in swearing allegiance to Mexico and renouncing allegiance to the United States. The Application itself which was completed by plaintiff contained the oath and renunciation, and the Certificate affirms that the oath and renunciation were voluntarily made. (Def. Ex. 15, 14(a)). Moreover, the evidence is clear that plaintiff knew he was repudiating allegiance to the United States through his actions. (Tr. 462; Def. Ex. 6;14).

Further, plaintiff's conduct indicated that his abandonment of United States citizenship was voluntary,

and understandingly made. Mr. Parsons testified that when plaintiff first visited the United States Consulate in 1971, he sought a determination of his United States citizenship status so that he could advise the draft board that he was no longer an American citizen. (Tr. 178). The evidence also reveals that at the time of plaintiff's Application he was eligible for induction into the United States military, (Tr. 580), having taken a physical examination on September 14, 1970, (Tr. 76; See also, Def. Ex. #13), and raises serious questions regarding plaintiff's "flouting of obligations inherent in American citizenship." *Jalbuena* v. *Dulles*, 254 F.2d 379 (3rd Cir. 1958).

Finally, the evidence adduced at trial indicates that, *inter alia*, plaintiff "loved Mexico and felt more Mexican than American", (Tr. 172, 269, 270, 349; Def. Ex. 14); that he intended to live permanently in Mexico, (Def. Ex. 14, 15; Tr. 172, 349, 351); that he intended to marry a Mexican woman, (Def. Ex. 15, 21; Tr. 349); that he registered for the Mexican military (Tr. 121, 128-129); that he registered with the Mexican Social Security Board (Def. Ex. 44(a), Tr. 128); and that he represented himself as a Mexican citizen and applied for and received a Mexican passport, (Tr. 125, 149, 150, 575; Def. Ex. #1).

The sum of plaintiff's activities compels the conclusion that his oath of allegiance to Mexico was voluntary, and understandingly made as was his abandonment of United States citizenship. See, *Kennedy*

v. *Mendoza-Martinez*, 372 U.S. 144 (1963); *Nemec* v. *Rogers*, 479 F.2d 920 (D.C. Cir. 1973).

D.

Much of plaintiff's challenge to the Certificate of Loss of United States Nationality issued by the Department of State rests upon his assertion that he was misled by members of the United States Counsular Office with whom he dealt. This Court has heard the testimony of plaintiff as well as that of the Counsular officers and finds that based upon the testimony of record plaintiff's contentions are without merit. The record reflects that plaintiff fully understood the nature of his actions and, in fact, actively sought the issuance of the Certificate of Loss of United States Nationality. (See, eg., Tr. 283, 291, 351, 359, 407; see also, Tr. 263, 308, 311-330, 343, 345, 350).

Further, as noted by defendant, the Certificate of Loss did *not*, by itself, create plaintiff's loss of American citizenship, (Tr. 465-466); rather, it merely reflected the fact that plaintiff had lost his United States citizenship as the result of his voluntary commission of an expatriating act as set forth in the statute. See, § 358 of the Act, 8 U.S.C. § 1501. Thus, plaintiff's claim of subsequent reliance upon Counsular officers cannot be characterized as detrimental, since his expatriation had already occurred.

IV. *Conclusion*

In light of the foregoing, we issue the following findings of fact and conclusions of law:

Findings of Fact

1. Laurence J. Terrazas was born in the United States, and was the son of a Mexican citizen.
2. Laurence J. Terrazas took an oath of allegiance to Mexico in connection with his Application for a Certificate of Mexican Nationality.
3. Laurence J. Terrazas knowingly and understandingly renounced allegiance to the United States in connection with his Application for a Certificate of Mexican Nationality.
4. Mexican law does not require an appeal to God as part of an oath of allegiance.
5. The taking of an oath of allegiance to Mexico and renunciation of a foreign country citizenship is a condition precedent under Mexican law to the issuance of a Certificate of Mexican Nationality.
6. A declaration of allegiance to Mexico has legal effect under Mexican law on the date of the issuance of the Certificate of Mexican Nationality.
7. A certificate of Mexican Nationality was issued to Laurence J. Terrazas on April 3, 1971.
8. Laurence J. Terrazas confirmed his oath of allegiance to Mexico on January 9, 1971.
9. Laurence J. Terrazas' words and conduct show that he knowingly and voluntarily took the Mexican oath of allegiance and renounced allegiance to the United States.

10. A Certificate of Loss of United States citizenship was issued to Laurence J. Terrazas by the Department of State on December 21, 1971.
11. Laurence J. Terrazas actively and voluntarily sought the issuance of a Certificate of Loss of United States citizenship.

Conclusions of Law

1. Laurence J. Terrazas acquired United States citizenship by birth.
2. Laurence J. Terrazas acquired Mexican citizenship by birth.
3. The Application for Certificate of Mexican Nationality contains a meaningful oath of allegiance to a foreign state within the meaning of § 349(a)(2) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1841(a)(2).
4. Defendant has proved by a preponderance of the evidence that Laurence J. Terrazas knowingly, understandingly and voluntarily took an oath of allegiance to Mexico, and concurrently renounced allegiance to the United States.
5. Laurence J. Terrazas voluntarily relinquished United States citizenship pursuant to § 349(a)(2) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1841(a)(2).
6. 8 U.S.C. § 1841(a)(2) is a valid and constitutional statute.

7. Laurence J. Terrazas is not entitled to the issuance of a United States passport pursuant to 22 U.S.C. § 212.

Judgment will enter in favor of defendant.

ENTER:

/s/ Abraham Lincoln Marovitz
ABRAHAM LINCOLN MAROVITZ
Judge

DATED: August 16, 1977

APPENDIX D

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

April 29, 1975

CASE OF: Laurence J. Terrazas

This case is before the Board on appeal from a holding of the Department of State, dated December 21, 1971, that appellant lost his U.S. citizenship on April 3, 1971, because he made a declaration of allegiance to the Republic of Mexico in connection with an application for a Certificate of Mexican Nationality. Section 349(a)(2) of the Immigration and Nationality Act provides that a national of the United States, whether by birth or naturalization, shall lose his nationality by:

> (2) taking an oath or making an affirmative or other formal declaration of allegiance to a foreign state or a political subdivision thereof; . . .

This provision of law, it will be noted, not only proscribes the taking of an oath to a foreign state but also "making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof." Under Mexican law a declaration of allegiance is accepted and recognized in lieu of an oath of allegiance.

Laurence J. Terrazas was born in the State of Maryland on December 13, 1947, of a United States citizen mother and a Mexican citizen father. He was, therefore, both a citizen of the United States and a citizen of Mexico from the time of birth having derived

Mexican citizenship through his father by virtue of Article 30 of the Constitution of Mexico. He first visited Mexico in 1963 at the age of 15 years. On May 21, 1966, Mr. Terrazas applied for and was granted a Mexican card of identity (Matricula No. 1300) by the Mexican Consul General in Chicago. In a Questionnaire he executed at the U.S. Consulate General in Monterrey on November 15, 1971, Mr. Terrazas explained why he applied for the Identity Card:

> I intended to travel to Mexico for a vacation and did not want to go as a tourist but as a Mexican citizen . . . I had no intentions of staying in Mexico permanently at that time."

Possession of the Mexican Identity Card obviated the necessity of securing a tourist card for entry into Mexico and, at the same time, it also served as proof of his Mexican citizenship. Mr. Terrazas resided in the United States until May 13, 1968, when at the age of 20 years and after attending the University of Illinois for two years, he departed for Mexico and enrolled in the Colegio Comercial Ingles as a student in business administration. He was graduated from this institution in June 1971.

On November 16, 1970, at the age of 22 years, Mr. Terrazas made application for a Certificate of Mexican Nationality. This was confirmed by the Mexican Ministry of Foreign Affairs on December 6, 1973, when our Embassy at Mexico City was furnished a certified copy of Mr. Terrazas's application for a

Certificate of Mexican Nationality. The full text reads as follows:

> I hereby respectfully request that I be issued a certificate of Mexican citizenship, on the basis of the facts confirmed by the attached documents, and in accordance with the legal provisions applicable to the case.
>
> I therefore hereby expressly renounce United States citizenship as well as any submission, obedience, and loyalty to any foreign government, especially to that of the United States of America, of which I might have been subject, all protection foreign to the laws and authorities of Mexico, all rights which treaties or international law grant to foreigners; and furthermore I swear adherence, obedience, and submission to the laws and authorities of the Mexican Republic.
>
> Under oath to speak the truth, I state that I have no title of nobility to renounce, but supposing that, even without my knowledge, I might have the right to such a title, I hereby formally renounce it, whatever its origin.
>
> I also hereby submit the following data:
> Full name of applicant: Laurence James Terrazas Wootton
>
> Marital status: Single
>
> Domicile: Parroquia 731-302, Colonia Del Valle, Mexico, D.F., Zone 12, Mexico
>
> Place and date of birth: Takoma Park, Montgomery County, Maryland, U.S.A. December 13, 1947.

Father's name and nationality: Carlos Terrazas Navarro. Mexican.

Mother's name and nationality: LaVerne Genevieve Wootton. American.

Mexico, D.F., November 16, 1970

/s/ Laurence James Terrazas Wootton

This document containing the declaration of allegiance to Mexico as well as the renunciation of U.S. citizenship was found acceptable by the Government of Mexico. On April 3, 1971, appellant was issued Certificate of Mexican Nationality No. 1962 by the Ministry of Foreign Affairs of Mexico. It appears from his statements of record that he again made a declaration of allegiance to the State of Mexico upon receipt of this Certificate.

The legal authority for the declaration of allegiance is found in Article 57 of the Mexican Nationality and Naturalization Act of January 5, 1934, as amended. This article reads as follows:

> *Article 57.* With respect to persons whom the law regards as Mexicans, and who are also considered to have a foreign nationality under the laws of another State, the Department of Foreign Affairs shall issue the appropriate certificates of nationality, and, to that end, shall require applicants to make to it the renunciation and to take the oath referred to in Articles 17 and 18 of this Law, and to comply with the other

> requirements set forth in the corresponding Regulations.
>
> The certificates shall constitute full proof of nationality, and their holders must present them in order to exercise rights which the law reserves to Mexicans.

The said Articles 17 and 18 read as follows:

> *Article 17.* Through the intermediary of the judge, the petitioner shall submit to the Ministry of Foreign Affairs a petition in which he shall expressly disclaim his original nationality and all subjection, obedience and allegiance to any foreign government, more particularly to the government of which he has hitherto been a subject; renounce any protection extraneous to the laws and authorities of Mexico and any rights granted to aliens by treaties or by international law; and pledge allegiance, obedience and submission to the laws and authorities of the Republic. These disclaimers and renunciations and this pledge shall be confirmed in the presence of the judge in the case of ordinary naturalization.
>
> Where it appears that the alien, when making the disclaimers and renunciations and giving the pledge referred to in this article, did so with mental reservations, fraudulently, or without the real, definite and permanent intention to remain bound by them, he shall be liable to all the penalties which are now or hereafter will become applicable under this Act or any other enactment.
>
> *Article 18.* If the alien applying for naturalization holds any title of nobility conferred by any

> foreign Government, he must expressly renounce the right to possess or use it.

At the age of 18 years appellant registered for military service with Selective Service Board No. 102 in Chicago. The records of Board No. 102 show that he was classified 2-S (student deferment) during part of his attendance at the school in Mexico, that is, until June 1970. Following the death of his father on November 23, 1970, the draft board granted him a hardship deferment (3-A) for six months beginning on February 25, 1971, and expiring on August 26, 1971. He was reclassified 1-A by his Appeals Board on November 23, 1971, and finally reclassified 1-H as of February 10, 1972, i.e. no longer available for induction except in case of a national emergency. According to his testimony at the hearing on February 7, 1975, appellant underwent and passed a physical for military service in September 1970. It is plainly evident from the record that his liability for military service in the U.S. Armed Forces was a major factor affecting his course of conduct in Mexico.

On August 29, 1971, appellant received a letter from his mother informing him that the hardship deferment had not been extended by Local Board No. 102. Shortly thereafter, early in September 1971, appellant went to the U.S. Consulate General in Monterrey and made inquiry "as to how he could go about renouncing his United States nationality". According to the affidavit of Vice Consul Wesley Parsons, dated August

9, 1972, appellant requested "a formal decision from the Consulate General concerning his citizenship status so he could send a letter to his draft board in Chicago informing them he was no longer a United States citizen". On August 31, 1971, Mr. Terrazas wrote to the Illinois State Director of Selective Service and advised him that "I have tried to fill out all the papers that Mr. Parsons gave me with the whole truth and nothing but the truth. I am no longer considered an American citizen and yet, I am trying to prove that my intentions were not bad." In this same letter appellant stated further: "On April 3, 1971, I was given a Mexican nationality certificate and on this same date in Mexico City, I swore allegiance to Mexico. I did not know that I was at the same time losing my rights as an American citizen." Appellant also executed an affidavit at the U.S. Consulate General on November 15, 1971, wherein he admitted taking an oath of allegiance to Mexico voluntarily and with the intention of relinquishing his United States citizenship. The full text of this affidavit reads as follows:

> I, Laurence James Terrazas, solemnly swear that I acquired United States nationality by virtue of birth at Takoma Park, Maryland on December 13, 1947.
>
> That I took an oath of allegiance to Mexico in connection with a Certificate of Mexican Nationality issued to me on April 3, 1971 at Mexico, D. F., Mexico.

I further swear that the act mentioned above was my free and voluntary act and that no influence, compulsion, force, or duress was exerted upon me by any other person, and that it was done with the intention of relinquishing my United States citizenship.

I have read the foregoing statement in the English language and I understand its contents.

/s/ Laurence James Terrazas

On December 23, 1971, the Department of State approved a certificate of loss of nationality in this case, as recommended by the U.S. Consulate General at Monterrey, Mexico.

As against this factual record, we have appellant's testimony at the hearing held on February 7, 1975, that he signed a "blank piece of paper" in applying for the Mexican Certificate of Nationality, that he was coerced into doing so by his domineering father and because possession of the certificate was necessary to receive a diploma from the school he was then attending in Mexico, that the American Vice Consul at Monterrey accused him of treason and threatened to prevent his return to the United States unless he cooperated in documenting his expatriating act of November 16, 1970, and finally, that his liability for U.S. military service in no way influenced his actions and conduct during the period 1968-1971. It is significant that during the period from September to November 1971, Mr. Terrazas showed no interest in

retaining United States citizenship. In fact, he visited the American Consulate General on his own initiative and requested a definite ruling with regard to his citizenship status. He fully cooperated in documenting the Vice Consul's preliminary finding of expatriation under section 349(a)(2) of the Immigration and Nationality Act. At that time when he was understandably concerned about his draft status, not one word of criticism was uttered against the Vice Consul. Then there was no claim of harrassment, browbeating, deception, threats, or of being accused of treason. These charges were leveled against the Vice Consul only after appellant sought to restore his American citizenship. At the hearing appellant persisted in blaming Vice Consul Parsons for his predicament saying that the Vice Consul accused him of committing treason and threatened to prevent his return to America unless he acknowledged his expatriating act by signing certain documents for submission to the Department. He belatedly sought to attribute these damaging admissions to consular duress and deception whereas, in fact, he was quite ready and willing to renounce his American citizenship in September 1971. Several months subsequent to December 21, 1971, the date on which the Department approved the loss-of-nationality certificate in this case, appellant appeared at the Consulate General in Monterrey to inquire "if he could regain his U.S. nationality." (See Monterrey's Operations Memorandum of July 6, 1972). The record being unclear as to the exact date of this inquiry, we can only

speculate as to what prompted it. Appellant's draft classification was changed from 1-A to 1-H on February 10, 1972.

For the purposes of section 349(a)(2) of the Act, an oath or declaration of allegiance to a foreign state must be meaningful as opposed to a superficial gesture of allegiance having no significance. The Department of State holds that for loss of nationality to result from taking an oath of allegiance to a foreign state, the oath must be one which is prescribed by law or regulations having the force of law and must be taken before a competent official of the foreign government (3 Hackworth, Digest of International Law, 218). In the case of Mexico the legal authority is found in the aforementioned Article 57 of the Mexican Nationality and Naturalization Act, as amended. As to the question of whether or not the declaration of allegiance in Mr. Terrazas's case was made to a competent official of the Mexican Government, we answer in the affirmative. Unlike the oath of allegiance which is taken in the presence of the administering official and which Mexico does not require or recognize, appellant's declaration of allegiance was an integral part of the application he signed on November 16, 1970, with full knowledge that such application would be presented to a competent official of the Mexican Ministry of Foreign Affairs for approval or disapproval. In this context we believe his declaration of allegiance was legally sufficient so far as concerns United States requirements. It was also meaningful in a larger sense. Former Secretary of

State and later Chief Justice of the Supreme Court, Charles Evans Hughes, is quoted as having defined an expatriating oath of allegiance as follows:

> It is the spirit and meaning of the oath, and not merely the letter, which is to determine whether it results in expatriation. It is not a mere matter of words. The test seems to be the question whether the oath taken places the person taking it in complete subjection to the state to which it is taken, at least for the period of the contract, so that it is impossible for him to perform the obligations of citizenship to this country. (3 Hackworth, Digest of International Law, 219-220)

In the case of Mr. Terrazas, we are of the opinion that his declaration of allegiance to Mexico placed him in complete subjection to that country. Although he ascribed his act to the influence of an autocratic father, he was 22 years of age at the time and presumably was capable of exercising independent judgment. Moreover, he freely accepted the certificate of Mexican nationality subsequent to his father's death. It is clearly inferable from the record that appellant's declaration of allegiance to Mexico was motivated, to a substantial degree, by a firm desire to identify himself with the Republic of Mexico. This is reflected in his affidavit of November 15, 1971, wherein he stated:

> In 1970, I decided that I wanted to stay here in Mexico and live here permanently. I have a great affection for this country and its people. This is not hard to understand, since my father

> was a citizen of this country and fought during the Mexican Revolution of 1910-1927. I plan on getting married to a Mexican girl within the year. By becoming a Mexican, it will be easier for me to work here. I hope to be able to better relations between both the United States and Mexico. Since I have blood relations on both sides of the Rio Grande, I believe that it is my duty to better the understanding between each country.

It is considered significant that the Mexican Ministry of Foreign Affairs acted favorably on his application of November 16, 1970, having found no cause to question its genuineness.

As to appellant's testimony that he signed a blank piece of paper on November 16, 1970, that he didn't read the document his father placed before him (TR 64), and that it was written in the Spanish language (TR 96), the U.S. Supreme Court was confronted with similar contentions in *Savorgnan* v. *United States*, 338 U.S. 491 (1950), and disposed of them as follows:

> The petitioner, in the instant case, was a competent adult. She voluntarily and knowingly sought and obtained Italian citizenship. Her application for naturalization and her oath of allegiance were in Italian, which she did not understand, but Savorgnan (petitioner's husband) did understand Italian, and he was with her when she signed them. She knew that the instruments related to her citizenship and that her signature of them was an important condi-

> tion upon which her marriage depended. She thus was as responsible for understanding them as if they had been in English. On that basis, she was married. Whatever the legal consequences of those acts may be, she is bound by them.

When all of these considerations are viewed in their totality, we can only conclude that the expatriating act in question was meaningful in the fullest sense.

Next we reach the question of whether the appellant's declaration of allegiance to Mexico was a voluntary act. It is statutorily presumed to have been performed voluntarily (Section 349(c) of the Act) and the burden is on Mr. Terrazas to prove otherwise. He claims to have signed the application against his will when pressured to do so by his domineering father. This circumstance, if true, did not make his act any the less deliberate or voluntary. As of November 16, 1970, when appellant signed the declaration of allegiance, he had passed the age of legal maturity and must be held bound by the election he made at that time. Based on his testimony at the hearing, he faced a choice between the benefits of a Mexican education and renunciation of his U.S. citizenship, and he chose the former.

In the case of *Jolley* v. *Immigration and Naturalization Service*, 441 F. 2nd 1245 (1971), the petitioner faced a choice between renunciation of his U.S. citizenship and a desire to avoid breaking the Selective Service laws of the United States. He contended that such a choice rendered his formal renunciation of

U.S. citizenship involuntary. The court disagreed for the reasons expressed in the following excerpt:

> While we accept the assertion that Jolley's abhorrence of the Selective Service laws caused him to apostatize himself, he cannot equate that abhorrence with coercion sufficient to render his renunciation involuntary as a matter of law. Dislike for the law does not in and of itself compose coercion; subjective detestation cannot be metamorphosed into duress. Jolley's Hobson's choice, if it be deemed such, was self-generated. The compulsion he felt to renounce his citizenship was of his own design. But opportunity to make a decision based upon personal choice is the essence of voluntariness.

Mr. Terrazas did not face a Hobson's choice as was the case in *Nishikawa v. Dulles*, 356 U.S. 129 (1958), and *In Re Bautista's Petition*, 183 F. Supp. 271 (1960). His expatriating act was not compelled by law. Appellant does not contend that the Mexican certificate of nationality was the only means by which he might have proved his Mexican nationality. He experienced no difficulty obtaining a card of identity from the Mexican Consulate General in Chicago.

We are not persuaded that appellant has overcome the presumption of voluntariness. This conclusion is buttressed by his admission that he freely made a declaration of allegiance to Mexico in Mexico City on April 3, 1971, upon receiving the Certificate of Mexican Nationality, and this occurred several months after his father died. The following quotation is taken from the Questionnaire he completed and signed

under oath at the Consulate General on November 15, 1971:

> Upon receiving this certificate of Mexican nationality I was asked to swear allegiance to Mexico which I did do willingly. Since I had applied for this certificate, I felt it was my duty to swear allegiance. I did this because I believe that a person who asks for such a document has the obligation to swear allegiance to that Country. When they gave me this document I voluntarily took this oath. By taking this oath I did not consider that I was relinquishing my rights as an American citizen as far as the United States Government was concerned; however, I did swear this oath of allegiance willingly and I was not under any pressures or influences (either mental or physical). This was a voluntary act on my part.

Our conclusion of voluntariness is further supported by his affidavit of November 15, 1971, wherein he admitted under oath that he had voluntarily made a declaration of allegiance to Mexico and with the intention of relinquishing his U.S. citizenship. Mr. Terrazas's charges of duress and intimidation against the American Vice Consul at Monterrey have no relevance to the question of whether or not he performed a voluntary act of expatriation on November 16, 1970. The record makes clear that appellant had no contact with the American Consulate General at Monterrey prior to September 1971.

Finally, we take up the question of whether appellant in declaring his allegiance to the Republic of

Mexico had the intention at that time of relinquishing his United States citizenship. An act which does not reasonably manifest an individual's transfer or abandonment of allegiance to the United States cannot be made a basis for expatriation (Attorney General's Statement Interpreting *Afroyim* v. *Rusk*, 387 U.S. 253 (1977)). Voluntary renunciation of citizenship is not confined to a written renunciation as is the case under Sections 349(a)(6) or (7) of the Act. It may also be manifested by other actions declared expatriative under the Act if such actions are in derogation of allegiance to this country (Attorney General's Statement *supra*).

The presence or absence of a subjective intent to abandon citizenship is to be determined by objective standards and circumstances. Here we start with the evidentiary rule that appellant's expatriative act constitutes highly persuasive evidence of a purpose to give up his American citizenship (see Justice Black's concurring opinion in *Nishikawa* v. *Dulles*, 356 U.S. 129). Notwithstanding the persuasive-evidence rule, it is agreed that the overall burden of proving such a purpose devolves upon the Government. We are confronted here by conduct short of a formal renunciation of citizenship before a diplomatic or consular officer of the United States but, nonetheless, a repudiation of all allegiance to the United States and obedience to its laws, certainly in derogation of allegiance to the United States. When appellant performed the expatriative act in question, the evidence of intent to

relinquish United States citizenship is not as strong as it is one year later when Mr. Terrazas faced the reality of induction into the U.S. Armed Forces. In November 1970, he was still a student presumably entitled to a student deferment although his 2-S classification expired in June 1970 and he submitted to and passed the physical examination in September of that year. His hardship deferment was not approved until February 25, 1971. What purpose would have been served by forgoing his American citizenship in November 1970 is not clear, but his subsequent conduct confirmed and is consistent with an intention to relinquish U.S. citizenship. It is axiomatic that the element of intent must coincide with the act of expatriation as should the requisite of voluntariness. All preconditions to expatriation should coexist at the same time and, if not, expatriation does not result. The expatriating conduct, in this instance, occurred on November 16, 1970, and not, as appellant's counsel seems to believe, at the Consulate General in November 1971.

The facts in the case of *King* v. *Rogers*, 463 F. 2d 1188 (1972), are somewhat analogous to those in the instant case. There the Court of Appeals (9th Circuit) reversed the U.S. District Court and held that King lost his U.S. citizenship when, upon becoming a British subject, he took an oath of allegiance to Queen Elizabeth II. This fact, coupled with a purpose to avoid liability for U.S. military service, was sufficient, in the judgment of the Court, to establish

a specific subjective intent to renounce his U.S. citizenship. Unlike the Terrazas case, King had made no explicit renunciation of his American citizenship but expressed a willingness to do so "if this is what will simplify my status." The following is quoted from *King* v. *Rogers*:

> We assume, without deciding, that specific subjective intent to renounce United States citizenship is required for expatriation. The Secretary may prove this subjective intent by evidence of an explicit renunciation, Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245 (5th Cir. 1971); acts inconsistent with United States citizenship, Baker v. Rusk, 296 F. Supp. 1244 (C.D., Cal., 1969); or by "affirmative voluntary act[s] clearly manifesting a decision to accept [foreign] nationality . . . ," In re Balsamo, 306 F. Supp. 1028, 1033 (N.D., Ill. 1969). Such proof need be only by a preponderance of the evidence. 8 U.S.C. § 1481(c).

If Mr. Terrazas, being a dual national, had done no more than make a declaration of allegiance to Mexico, he would have stood on firmer ground in taking this appeal (*Kawakita* v. *U.S.*, 343 U.S. 717; *Jalbuena* v. *Dulles*, 254 F. 2d 379). In *Jalbuena* the appellant in applying for a Philippine passport made a declaration under oath that he would support and defend the Constitution of the Philippines and would bear true faith and allegiance to the same. He was aware at the time that he had become a citizen of the Philippines by operation of law but not aware that he had also retained U.S. citizenship. The Court said:

> . . . restriction upon the reach of the expatriation statute is particularly important in dual citizenship cases which, in their nature, present special difficulties not present where the actor is a citizen of the United States only. The United States recognizes that a person may properly be simultaneously a citizen of this country and of another. Neither status in itself or in its necessary implications is deemed inconsistent with the other. "* * * The concept of dual citizenship recognizes that a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both. The mere fact that he asserts the rights of one citizenship does not without more mean that he renounces the other. * * * [D]ual citizenship * * * could not exist if the assertion of rights or the assumption of liabilities of one were deemed inconsistent with the maintenance of the other." . . .

In the instant case, in addition to the declaration of allegiance to Mexico, we have an explicit and concurrent renunciation of appellant's U.S. citizenship including all submission, obedience and loyalty to the U.S. as well as a disavowal of all protection foreign to the laws and authorities of Mexico. This latter circumstance is the expatriating conduct which indicates "some flouting of obligations inherent in American citizenship" (*Jalbuena* v. *Dulles*, *supra*). The former Board of Review on Loss of Nationality was confronted with a similar situation (dual nationality) in the case of *George G. Glascock* who also made a declaration of allegiance to Mexico in connection with a passport application (Board's opinion dated

March 30, 1966). The appellant in that case relied, in part, on the decisions in *Jalbuena* and *Kawakita*. The Board considered those cases distinguishable on the facts and so stated in the following language:

> . . . Viewed objectively, the form of appellant's oath, including specific renunciation of his allegiance to the United States, went beyond the mere affirmation of the allegiance he already owed to Mexico in such a way, on its face, as to place appellant in "complete subjection" to Mexico and to make it impossible for him "to perform the obligation of citizenship to this country".

In consideration of the complete record, we view appellant's declaration of allegiance to Mexico and his concurrent repudiation of any and all submission, obedience, and loyalty to the United States as compelling evidence of a specific intent to relinquish his United States citizenship. It would be a contradiction to hold that one who had voluntarily and unequivocally renounced all allegiance and loyalty to his country intended, at the same time, to retain the citizenship of that country. This conclusion is reinforced by Mr. Terrazas's affidavit of November 15, 1971, wherein he admitted under oath that his declaration of allegiance to Mexico "was my free and voluntary act and that no influence, compulsion, force, or duress was exerted upon me by any other person, and that it was done with the intention of relinquishing my U.S. citizenship."

Accordingly, we conclude that the Department's prior administrative holding in this case must be affirmed.

/s/ James J. Hines, Member
JAMES J. HINES, Member

/s/ Alan W. Ford
ALAN W. FORD, Member

Dissenting Opinion

The sole issue that gives me pause is whether, in light of the rationale of *Jalbuena* v. *Dulles*, 254 F.2d 379 (1958), appellant's declaration of allegiance to Mexico falls within the purview of section 349(a)(2) of the Immigration and Nationality Act (hereafter referred to as "the Act").[1] If it were not for the doubts that I have on this point of law, I would agree with the result reached in the above majority opinion.

I

The appellant was born at Takoma Park, Maryland on December 13, 1947. His father was a Mexican citizen and his mother was a United States citizen.

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[1] Section 349(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1481) reads:

> Sec. 349. From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by—
>
> . . . .
>
> (2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof; . . .

Appellant was from birth a dual national, being a citizen of the United States under our laws and a citizen of Mexico under the laws of that country.[2] He resided with his parents in the United States until May 1968. Thereafter, he resided in Mexico, and attended the Colegio Comercial Ingles, a business school, in Monterrey until he graduated in June 1971.

In 1970, appellant applied for a certificate of Mexican nationality. The application was made on a prescribed form in Spanish addressed to the Mexican Department of Foreign Affairs and was dated November 16, 1970. As part of the application, appellant subscribed to the following declaration:

> I therefore hereby expressly renounce United States citizenship, as well as any submission, obedience, and loyalty to any foreign government, especially to that of the United States of America, of which I might have been subject, all protection foreign to the laws and authorities of

[2] Article 30 of the Constitution of Mexico of February 5, 1917, as amended by Decree of January 18, 1934 reads in part:

> *Article 30.* Mexican nationality is acquired by birth or naturalization.
>
> (A) The following persons are Mexican nationals by birth:
>
> (I) Persons born within the territorial limits of the Republic, irrespective of the nationality of their parents;
> (II) Persons born in foreign countries of Mexican parents; of a Mexican father and alien mother; of a Mexican mother and unknown father; and . . .

United Nations Legislative Series, ST/LEG/SER. B/4, *Laws Concerning Nationality*, 307 (1954).

> Mexico, all rights which treaties or international law grant to foreigners; and furthermore I swear adherence, obedience, and submission to the laws and authorities of the Mexican Republic.[3]

On April 3, 1971, the Mexican Department of Foreign Affairs issued appellant Certificate of Mexican Nationality No. 1962. It read:

> I, the Under Secretary of Foreign Affairs, certify: That Laurence James Terrazas Wootton is Mexican by birth under the terms of Article 30(A)(II) of the Political Constitution of the United Mexican States, inasmuch as he has proved that he was born on December 13, 1947, in Takoma Park, Montgomery County, U.S.A., to a Mexican father. He has furthermore sworn adherence, obedience, and submission to the laws and authorities of the United Mexican States, and has expressly renounced all rights inherent to any other nationality, as well as all submission, obedience, and loyalty to any foreign government, especially to those which have recognized him as that national.[4]

In September 1971, appellant visited the Consulate General at Monterrey to clarify his citizenship status. On that occasion, he informed the American Vice Consul of the certificate of Mexican nationality that was issued to him on April 3, 1971, and of his desire to have a final determination made of his United

[3] English translation, Division of Language Services, Department of State, LS No. 39937-B.

[4] English translation, Division of Language Services, Department of State, LS No. 39938-A.

States citizenship status. Subsequently, appellant was given the opportunity to state fully all the facts, circumstances, and motives surrounding the acquisition of his certificate of Mexican nationality. In that connection he executed under oath on November 15, 1971, an affidavit, a citizenship questionnaire, and an application for registration as an American citizen. Appellant also executed under oath on November 15, 1971, a letter addressed "To whom it may concern" relating to his acquisition of the Mexican certificate of nationality.

On December 7, 1971, the Consulate General prepared a certificate of loss of nationality of the United States in the name of appellant, as required by section 358 of the Act.[5] It recited that appellant expatriated himself "on April 3, 1971" under section 349(a)(2) of the Act by taking "an oath of allegiance to Mexico" in connection with his application for a certificate of Mexican nationality. The Department of State (Passport Office) on December 21, 1971, approved the certificate of loss of nationality. Thereafter, appellant filed an administrative appeal with the Board of Appellate Review of the Department of State.

[5] Section 358 of the Immigration and Nationality Act (8 U.S.C. 1501) reads:

> Sec. 358. Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of chapter 3 of this title, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates.

As the majority opinion indicates, there are inconsistencies in the record relating to appellant's declaration of allegiance to Mexico. In a letter to the Illinois State Director of the Selective Service Board of August 31, 1971, appellant stated that he "swore allegiance to Mexico" on April 3, 1971, when he was given a "Mexican Naturalization Certificate". In an affidavit of November 15, 1971, appellant also swore that he took an oath of allegiance to Mexico in connection with a certificate of Mexican nationality that was issued on April 3, 1971, and that it was done with the intention of relinquishing his United States citizenship. In a questionnaire, however, dated November 15, 1971, also under oath, he averred that he voluntarily swore allegiance to Mexico, but did not consider that he was relinquishing his rights as an American citizen. And, at the hearing before the Board on February 7, 1975, appellant testified under oath that in September 1970, he signed, without reading, an application "in blank" for a certificate of Mexican nationality (TR. 64),[6] that he needed proof

[6] "TR. 64" refers to the transcript of the proceedings before the Board of Appellate Review, February 7, 1975, at page 64 thereof.

of his Mexican citizenship to get a diploma (TR. 66), that he never went to Mexico City to swear allegiance to Mexico (TR. 73), and that he never took an oath of allegiance when he received his certificate of Mexican nationality (TR. 74). It is undisputed, however, that appellant subscribed to a declaration of allegiance to Mexico in his application for a certificate of Mexican nationality dated November 16, 1970.

The record also shows that appellant's counsel at times misapprehended the nature of the expatriative act attributed to appellant. This, in my opinion, further confused the record. In counsel's letter of June 26, 1972, for example, he stated that "it was only the Department of State that advised him (appellant) that he needed a Certificate of Mexican Nationality and he acted upon their advice that he was committing a crime by not renouncing his American Citizenship". This is not borne out by the facts. In his letter of February 8, 1974, appellant's counsel further stated that but "for the bad advice received from the United States Department of State, he (appellant) would not have the claim of the State Department, that he lost his American citizenship, to defend." Furthermore, at the hearing held on February 7, 1975, counsel for the appellant apparently still considered the consular officer at Monterrey as the "perpetrator" of appellant's loss of citizenship by documenting and obtaining documents from appellant about his expatriative act for the Department's consideration, and also by failing to investigate appellant's background before preparing a certificate of

loss of nationality (TR. 56-59). The act of expatriation in issue, however, is appellant's declaration of allegiance to Mexico, which he had subscribed to in his application of November 16, 1970, for a certificate of Mexican nationality. It is not the conduct of the appellant or the consular officer, approximately a year later, in discussing and documenting the facts, circumstances, and motives relating to appellant's act of expatriation.

II

Appellant was a dual national of the United States and Mexico. As the U.S. Court of Appeals (3rd Circuit) stated in *Jalbuena* v. *Dulles*, 254 F.2d 379, 381 (1958), "dual citizenship cases . . . in their nature, present special difficulties not present where the actor is a citizen of the United States only". The Supreme Court in *Kawakita* v. *United States*, 343 U.S. 717, 723 (1952), had earlier pointed out that "the concept of dual citizenship recognizes that a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both"; and the "mere fact that he asserts the rights of one citizenship does not without more mean that he reduces the other."

In *Kawakita*, the Supreme Court refused to rule as a matter of law that various wartime acts of the defendant constituted anything more than a declaration of his existing Japanese nationality. Although the defendant registered in the Koseki (a family census register) as a Japanese citizen, obtained work at a

prisoner-of-war camp, traveled to China on a Japanese passport, accepted labor draft papers from the Japanese Government, "faced the east each morning and paid his respects to the Emperor", made statements against the United States, and taunted American prisoners of war, the Court held that the evidence was sufficient to support the finding of the jury that Kawakita had not renounced or lost his United States citizenship at the time he committed the above acts.

With respect to defendant's registration in the Koseki as a Japanese citizen, the Court stated that it could not say "as a matter of law that it was a renunciation of petitioner's American citizenship". The Court said that petitioner's registration in the Koseki "might reasonably be taken to mean no more than an assertion of some of the rights which his dual citizenship bestowed on him". The Court indicated that "in other settings" it might be the equivalent of naturalization within the meaning of section 401(a) of the Nationality Act of 1940, or a declaration of allegiance to Japan within section 401(b) of that Act. But, the Court did not suggest what "other settings" would warrant a conclusion differing from the *Kawakita* decision.

The Court of Appeals in Jalbuena relied on the *Kawakita* decision. It held that a dual national did not expatriate himself by taking an oath of allegiance to a foreign state of which he was a citizen. Jalbuena, a native-born citizen of the United States and a citizen of the Philippines by operation of law, did not lose nationality of the United States under section

401(b) of the Nationality Act of 1940 by taking an oath of allegiance to the Commonwealth of the Philippines in connection with an application for a Philippines passport. The Court stated that "the form of oath he was required to execute as part of his passport application declared no more than his undertaking 'to support and defend the Constitution of the Philippine Islands' and his 'allegiance' to that fundamental law."

Since Jalbuena was already a Philippine citizen when he took the oath, he had merely exercised a routine privilege of his Philippine nationality, and had done nothing in derogation of his allegiance to the United States. As a basis for invalidating the oath taken by Jalbuena, the Court said:

> Certainly this citizen of the Philippines, residing in that country, was bound loyally to support and defend the fundamental law of that land just as he would be bound in this country to support and defend our Constitution. Despite each obligation he may remain a citizen of the other country. Hence, merely to acknowledge and declare the Philippine obligation in a Philippine passport application cannot reasonably have significance in derogation or renunciation of birthright American citizenship.

The Court further said that—

> . . . conduct merely declaratory of what one national aspect of dual citizenship necessarily connotes, cannot reasonably be construed as an act of renunciation of the other national aspect of the actor's dual status.

It found support for this rule in the Supreme Court's statement in *Kawakita* that the mere fact that a dual national "asserts the rights of one citizenship does not without more mean that he renounces the other."

In the instant case, the rationale of *Jalbuena* would seem to raise some doubt as to whether appellant's declaration of allegiance to Mexico resulted in his expatriation under section 349(a)(2) of the Act. It is inconclusive whether appellant's express statement of adherence, obedience, and submission to the laws and authorities of the Republic of Mexico, standing alone, could properly be held to result in the loss of his United States citizenship. It could very well be argued and sustained that appellant's declaration of allegiance did not go beyond the affirmation of allegiance that he already owed to Mexico as a citizen of Mexico. Although the *Jalbuena* decision related specifically to an oath taken in connection with a foreign passport application, the rationale of the Court of Appeals in *Jalbuena* suggests that a dual national could only be held expatriated by taking an oath of allegiance to a state of which he was a national in circumstances where the allegedly expatriating conduct indicates "some flouting of obligations inherent in American citizenship".

With respect to appellant's statement of renunciation of United States citizenship appearing in his declaration, it should be noted that the statement clearly does not fall within any of the enumerated

statutory acts of expatriation. Section 349(a)(6) of the Act, which provides for a formal renunciation of nationality, requires that the renunciation be made "before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State . . .". Accordingly, there is even some doubt whether the specific renunciatory language appearing in appellant's declaration to which he subscribed has any legal effect. The Court in *In Re Bautista's Petition*, 183 F. Supp. 271 (1960), considered that a citizen's certificate of renunciation of her United States citizenship, taken before a notary public in the Philippines, "was a nullity" as it was not renounced before a diplomatic or consular officer of the United States in a foreign state as required by statute.

In view of doubts as to the correct interpretation of section 349(a)(2) of the Act in light of *Kawakita* and *Jalbuena* in the circumstances of this case, I am constrained on this narrow ground to dissent from the majority decision. The Supreme Court has emphasized that, where deprivation of the "precious right of citizenship" is involved, "the facts and the law should be construed so far as is reasonably possible in favor of the citizen." *Nishikawa* v. *Dulles*, 356 U.S. 129, 134 (1958); *Schneiderman* v. *United States*, 320 U.S. 118, 122 (1943).

/s/ Edward G. Misey
EDWARD G. MISEY, Chairman

APPENDIX E

[IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT]

August 24, 1978

Before

HON. LATHAM CASTLE, Senior Circuit Judge
HON. LUTHER M. SWYGERT, Circuit Judge
HON. ROBERT A. SPRECHER, Circuit Judge

No. 77-2007

LAURENCE J. TERRAZAS, PLAINTIFF-APPELLANT

vs.

CYRUS VANCE, SECRETARY OF STATE,
DEFENDANT-APPELLEE

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 75 C 2370—ABRAHAM L. MAROVITZ, *Judge*

On consideration of the petition for rehearing and suggestion for rehearing *en banc* filed in the above-entitled cause by defendant-appellee Cyrus Vance, Secretary of State, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing and suggestion that said petition be reheard *en banc* be, and the same is hereby, DENIED.

Circuit Judge Harlington Wood, Jr. did not participate in the *en banc* consideration of this matter.

APPENDIX F

IN THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

No. 77-2207

[U.S.C.A.—7th Circuit—Received in Clerk's Office Sept. 22, 1978—Thomas F. Strubbe, Clerk]

LAURENCE J. TERRAZAS, PLAINTIFF-APPELLANT

v.

CYRUS VANCE, SECRETARY OF STATE,
DEFENDANT-APPELLEE

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that CYRUS VANCE, Secretary of State, by his attorney, THOMAS P. SULLIVAN, United States Attorney for the Northern District of Illinois, hereby appeals to the Supreme Court of the United States from the final judgment holding 8 U.S.C. § 1481(c) unconstitutional, entered in this action on August 24, 1978, when the United States Court of Appeals for the Seventh Circuit denied defendant-appellee's petition for rehearing and suggestion for rehearing en banc.

This appeal is taken pursuant to 28 U.S.C. § 1252, and § 2101(a).

THOMAS P. SULLIVAN
United States Attorney

Notice should be served upon:

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09/19/78

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